

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

AMAZIN' RAISINS INTERNATIONAL, INC.  
an Ontario, Canada corporation,

Plaintiff,

V.

Civ. Action No. 04-12679-MLW

OCEAN SPRAY CRANBERRIES, INC.,  
a Delaware corporation,

Defendant.

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO  
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT ON THE  
ISSUE OF INFRINGEMENT PURSUANT TO RULE 56(F)**

Plaintiff Amazin' Raisins, Inc. ("Amazin' Raisins") submits this memorandum in opposition to Defendant Ocean Spray Cranberries, Inc.'s ("Ocean Spray's") motion for summary judgment on the issue of infringement pursuant to Rule 56(f). Amazin' Raisins seeks a continuance under Rule 56(f) to permit Amazin' Raisins to take the deposition of Harold Mantius and enable Amazin' Raisins to fully respond to Ocean Spray's motion for summary judgment.

On December 21, 2005, Ocean Spray filed its motion for summary judgment of noninfringement. In support of this motion, Ocean Spray submitted the declaration of Harold Mantius, the Senior Principal Process Engineer for Ocean Spray. Mr. Mantius was the primary person involved with the development of the process used by Ocean Spray that Amazin' Raisins has accused of infringement. (See Werner Decl., Ex. 1.)

In preparing its opposition to Ocean Spray's motion for summary judgment, Amazin' Raisins realized that it would be necessary to take the deposition of Mr. Mantius in order to fully address all of the issues raised by the motion. Accordingly, with the assent of Ocean Spray, Amazin' Raisins requested an extension of time in which to respond to the motion for summary judgment to permit Amazin' Raisins to depose Mr. Mantius. The Court granted the requested motion for extension of time.

Upon receiving the requested extension of time, the parties jointly scheduled the deposition of Harold Mantius for Wednesday, January 25, 2006. The weekend prior to the scheduled deposition, however, Mr. Mantius' father passed away. In an effort to accommodate the needs of Mr. Mantius, Amazin' Raisins agreed to postpone his deposition. As a result of this unexpected change to the schedule, the parties were unable to schedule a revised deposition date that would have provided Amazin' Raisins with adequate time to prepare its opposition to the motion for summary judgment. As a result, Amazin' Raisins was forced to move for a one-week extension of time in which to respond to the motion for summary judgment. Ocean Spray assented to this request for an extension of time. The Court has not yet ruled on this motion.

The deposition of Mr. Mantius is currently scheduled to be conducted on Tuesday, February 7, 2006. Upon completing this deposition, Amazin' Raisins intends to supplement its opposition to the motion for summary judgment by submitting a memorandum on Friday, February 10, 2006.

As this discussion demonstrates, the pending request for an extension of time was not interposed for purposes of delay, but was necessitated by the unfortunate passing of Mr. Mantius' father. Unless the Court grants Amazin' Raisins a continuance pursuant to Rule 56(f) that would permit Amazin' Raisins to take the deposition of Harold Mantius and address

the issues set forth in Ocean Spray's motion for summary judgment, Amazin' Raisins will suffer grave prejudice. For these reasons, Amazin' Raisins seeks a one-week continuance of the motion for summary judgment to permit Amazin' Raisins to supplement this opposition with the testimony provided by Mr. Mantius in his deposition scheduled for next week.

Dated: February 3, 2006

s/Todd S. Werner

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